



NITYA'S INSIGHT

Cenvat Alert | Full sales tax deductible in case of Net Present Value (NPV) based sales tax incentive scheme

October 23, 2015

Dear Reader,

This is to update you on a recent ruling of the Tribunal in the case of ***Uttam Galva Steels Limited***. The judgment pertains to exclusion of sales tax actually payable from the transaction value in case of Net Present Value ('NPV') based sales tax incentive scheme.

In this case, the assessee was availing benefit under the *Package Scheme of Incentives, 1993* and was allowed to pay sales tax collected at normal rates on deferred basis. In 2002, the Bombay Sales Tax Act was amended to allow the option of paying a reduced amount equal to NPV of deferred tax. The Act further provided that on making payment of NPV, the deferred tax would be deemed to have been paid.

The issue arose as to whether the entire sales tax shall be allowed as deduction from the transaction value for levy of excise duty. The revenue contended that since the sales tax was paid at NPV, deduction should be allowed only to that extent and the differential amount should be subject to excise duty.

The Tribunal, whilst ruling in the favor of the assessee, observed that the tax liability was not exempted but deferred under the deferment scheme. The deferred tax amount was sales tax payable by the assessee at the time of removal of goods. Thus, the deferred tax amount should be allowed as deduction for the purpose of determination of assessable value. The Tribunal also highlighted the fact that the deferred tax was deemed to have been paid in case the assessee opted for pre-mature payment of sales tax on the basis of NPV. The deeming fiction accorded for satisfaction of the liability of deferred tax. Hence, the sales tax paid by the assessee on NPV shall be deemed to be sales tax paid in full and deduction of entire sales tax shall be allowed. The Tribunal distinguished the decisions of the Apex Court in the case of *Super Synotex* and *Maruti Udyog*. The Tribunal observed that the Apex Court dealt with situation where the incentive was in the nature of exemption and amount retained as sales tax was not payable.

A copy of the judgment has been attached herewith for ready reference.

In case of clarification, please feel free to revert.

Regards,

Team NITYA



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